BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:	
Federal-State Joint Board on Universal Service	CC Docket No.96-45
1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	CC Docket No.98-171
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	CC Docket No.90-571
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	CC Docket No.92-237 NSD File No.L-00-72
Number Resource Optimization	CC Docket No.99-200
Telephone Number Portability	CC Docket No.95-116
Truth-in-Billing and Billing Format	CC Docket No.98-170

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA

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I. EXECUTIVE SUMMARY

The California Public Utilities Commission and the People of the State of California ("California" or "CPUC") respectfully submit these comments on the Second Further Notice of Proposed Rulemaking (*Second FNPRM*) in the above-captioned proceeding. California supports the Commission's revenue-based contribution methodology adopted in the *Interim Order*. The revenue-based mechanism is equitable and nondiscriminatory, and complies with statutory provisions for universal service. As California has stated before, any perceived problems with the revenue-based mechanism can be resolved by modifying the revenue-based mechanism.

In contrast, California believes that all three connection-based proposals in the *Second FNPRM* present myriad complications, and are unfair and inequitable to no-usage and low-usage customers. The proposals also conflict with section 254 of the Telecommunications Act. In addition, while a connection-based proposal is not directly tied to intrastate revenues, it is based indirectly on intrastate usage. The connection-based proposals would assess all customers, including those that have no interstate usage, in violation of section 152(b) of the Act.

II. INTRODUCTION

The FCC adopted an *Interim Order* accompanied by the *Second FNPRM*. In the *Interim Order*, the Commission increased from 15 percent to 28.5 percent the safe harbor for cellular, broadband Personal Communications Service (PCS), and certain Specialized Mobile Radio (SMR) providers. The wireless safe harbor allows these wireless carriers to assume 28.5 percent of their telecommunications revenues are interstate. Mobile wireless providers still have the option of reporting their actual interstate telecommunications revenues. The Commission also modified the existing revenue-based methodology by basing contributions on a percentage of projected collected, instead of gross-billed, interstate and international end-user telecommunications revenues reported by contributors on a quarterly basis. In addition, the Commission concluded that telecommunications carriers may not recover their federal universal service contribution costs through a separate universal service line item that includes a mark up above the relevant contribution factor. Contributors are allowed to express the line item as either a flat amount or a percentage, as long as the line item does not exceed the interstate telecommunications portion of a customer's bill times the relevant contribution factor. The Commission also revised its Lifeline rules to prohibit all Eligible Telecommunications Carriers (ETCs) from recovering contribution costs from their Lifeline customers.

In the *Second FNPRM* the Commission seeks comment on whether to retain the current revenue-based mechanism as well as on three connection-based proposals. The first connection-based proposal would impose a minimum contribution obligation on all interstate telecommunications carriers and a flat charge for each end-user connection depending on the nature or capacity of the connection. A second proposal would assess all connections based purely on capacity, with contribution obligations for each switched end-user connection shared between access and transport providers. The third connection-based proposal would assess providers of switched connections based on their working telephone numbers. The Commission has set forth a number of issues for comment in this *Second FNPRM,* and the CPUC comments only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with these proposals.

III. THE COMMISSION SHOULD CONTINUE THE REVENUE-BASED CONTRIBUTION METHODOLOGY ADOPTED IN THE INTERIM ORDER FOR THE LONG-TERM, MODIFYING THE MECHANISM AS NECESSARY

The Commission asks whether the changes to the revenue-based methodology adopted in the *Interim Order* are sufficient to ensure the long-term viability of universal service as telecommunications evolves. (*Second FNPRM*, para. 67) The Commission also asks if any additional modifications to the revenue-based system should be made. (*Second FNPRM*, para. 67)
The Commission seeks comment on whether bundling of local and long distance services raises any unique problems for wireline carriers in identifying interstate telecommunications revenues and how such problems should be addressed. (*Second FNPRM*, para. 67)

The CPUC is pleased the Commission continued a revenue-based methodology in its *Interim Order*. The revenue-based mechanism extends contribution accountability to all providers of interstate telecommunications as required by section 254 of the Act, on an equitable and nondiscriminatory basis. The revenue-based mechanism is workable and can provide long-term viability to the federal universal service fund. The revenue-based mechanism is relatively easy to administer and provides continuity and predictability. It is the most equitable mechanism for residential and business customers, especially those customers who use little or no interstate service. A revenue-based approach assesses users' contributions in direct proportion to how much they use the network. A revenue-based mechanism for federal universal service is also more equitable to large states, such as California, which already support a large intrastate universal service fund through intrastate revenues. Large states should not have to bear the burden of contributing to the federal universal service fund through a mechanism, such as a connection-based approach, which is not based on the usage of the interstate network and which indirectly assesses intrastate revenues.

As California has stated before, any perceived problems with the revenue-based mechanism can be resolved by modifying the revenue-based mechanism. In fact, the *Interim Order* has already made modifications to the revenue-based plan, for instance, by increasing the wireless safe harbor. California believes that any perceived problems with the current revenue-based method are far less than the problems identified with a connection-based method.

In general, basing contributions on contributor-provided projections of collected end-user interstate and international telecommunications revenues, instead of historical gross-billed revenues, eliminates the need for carriers to engage in complex calculations to account for variables like uncollected revenues, credits, and the need to recover universal service contributions from a declining revenue base. The Commission addressed the revenue lag problem that penalizes those carriers with declining interstate revenues while subsidizing those with growing interstate revenues. Because carriers will be assessed in the period for which revenues are projected, the modified methodology will eliminate the interval between the accrual of revenues and the assessment of universal service contributions based on those revenues. The lack of a mark-up prevents assessment of excessive charges to the customers by the carriers. All of these changes address concerns raised by commenters.

The Commission seeks comment on whether it should abolish the safe harbor for mobile wireless carriers and, if so, how such carriers should determine their actual interstate end-user telecommunications revenues. The Commission specifically seeks comment on whether minutes of use is an appropriate proxy for determining interstate revenues for mobile wireless providers. The Commission also requests comment on whether the originating cell site and the terminating area code or NPA of a call reasonably approximates the jurisdictional nature of traffic for reporting purposes. (*Second FNPRM*, para. 68.)

In the *Interim Order*, the FCC adjusted the wireless carrier safe harbor to reflect the rise in interstate wireless calling since the initial safe harbor level was set. If the Commission desires to fine-tune the revenue-based mechanism adopted in the *Interim Order*, rather than a safe harbor, wireless carriers could contribute to the federal universal service fund based on their actual interstate revenues.

The wireless safe harbor could be phased out over time once all wireless carriers have systems that can track their interstate usage. Tracfone recommends a methodology that relies on the location of the initial cell site associated with the caller and states that, although such an approach is not 100% accurate, it would be accurate for most wireless calls.[1] The terminating location is easily determined for wireline telephones. For calls that terminate on wireless handsets, Tracfone recommends that the location of the terminating cell site (if available) be used and, where the location of the terminating cell site is unavailable, the location of the terminating wireless switch could be used.[2] While California believes that the Commission's proposal to approximate the jurisdictional nature of traffic by the originating cell site and the terminating area code or NPA of a call is workable, the Tracfone recommendation appears to reflect more accurately the jurisdictional nature of the call.

[1] Tracfone Ex Parte, filed October 25, 2002.

[2] Tracfone Ex Parte, filed October 25, 2002.

In the event wireless carriers contribute to the federal universal service fund based on their actual interstate revenues, the same rules should apply to wireless carriers as the wireline carriers. As with the wireline carriers, the carriers would have the flexibility to express the line item either as a flat amount or as a percentage, as long as the line item does not exceed the interstate telecommunications portion of a customer's bill times the relevant contribution factor.

The Commission could also revisit on a periodic basis the wireless safe harbor percentage to ensure that it appropriately reflects wireless carriers' interstate traffic and revenues. A safe harbor that reflects current wireless calling activity appears to promote equitable contributions from these carriers, fund stability, and administrative simplicity.

The Commission has also expressed concern over how to determine interstate revenues when carriers bundle packages of interstate and intrastate telecommunications and non-telecommunications products and services. (*Second FNPRM*, para. 67) Some commenters view this as a reason to dispose of a revenue-based mechanism altogether in favor of a connection-based approach. California recognizes this concern; however, we do not view it as a valid reason to forego a revenue-based approach, especially in light of the myriad problems with the connection-based approaches. First, carriers must equitably attribute interstate revenues for other purposes. Even under the *Second FNPRM's* connection-based proposal with a mandatory minimum obligation based on interstate revenues, the carriers must distinguish interstate revenues. In addition, carriers must continue to equitably attribute interstate revenues, regardless of the federal universal service contribution methodology. For example, in California, carriers must separate interstate and intrastate revenues for purposes of the state user fees. This is because carriers only report intrastate revenues for this purpose. In addition, carriers need to determine interstate and intrastate revenues for federal programs such as Telecommunications Relay Service, Numbering Administration, Local Number Portability, and regulatory fees. Moreover, carriers must continue to track interstate and intrastate revenues in order to remit collections from end-users to state universal service programs such as California's. Therefore, regardless of the federal universal service fund contribution methodology, carriers must continue to track interstate and intrastate revenues.

One possible approach for carriers who bundle interstate and intrastate revenues is to base their contribution on periodic traffic studies. A carrier could track its interstate and intrastate calls by traffic studies rather than by customer calls. This approach may be more administratively feasible if real time tracking is too burdensome. This approach would be carrier specific rather than customer specific. In addition, if a carrier offers several bundling options to customers, each bundle should have its own traffic study.

Also, the Commission's rules currently provide a safe harbor for the reporting of telecommunications revenues when bundling telecommunications services with customer premises equipment or information services.[3] The Commission may choose to expand the safe harbor to other carriers and other services, such as bundled interstate and intrastate services. If carriers can track interstate and intrastate minutes of use, e.g., through periodic traffic studies, the minutes of use ratio can form a reasonable proxy for allocating interstate revenues for purposes of USF. Expanding the safe harbor is a preferable route to abandoning a revenue-based approach altogether. In fact, these approaches for bundling are far less burdensome than the problems caused by the connection-based approaches.

Moreover, the revenue-based mechanism clearly meets section 254(d) of the Act. Section 254(d) provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[4] Under the revenue-based mechanism, every telecommunications carrier that provides interstate telecommunications service will contribute to the federal universal service fund on an equitable and nondiscriminatory basis. A revenue-

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[3] *See Policy and Rules Concerning Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules In the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Report and Order, 16 FCC Rcd 7418, 7446-48, paras. 47-54 (2001) (*Bundling Order*).

[4] 47 U.S.C. section 254(d).

based approach is equitable because it reflects differences among carriers' amounts of interstate service. Carriers that benefit from a large amount of end-user interstate revenue should bear a proportionate share of the contribution obligation to the universal service fund.

In addition, Section 202(a) of the Act prohibits carriers from making or giving "any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."[5] The Commission requires that contributors neither discriminate nor shift more than an equitable share of their contributions to any customer or group of customers.[6] End-users who use the interstate network the most (in addition to the recipients of the universal service fund) benefit the most. Consequently, individuals who benefit more from the interstate network should bear more of the burden of contributing to federal universal service. A revenue-based approach assesses users' contributions in direct proportion to how much they use the network.

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[5] 47 USC section 202(a).

[6] *Universal Service Order*, 12 FCC Rcd at 9199, para. 829.

IV. THE COMMISSION SHOULD NOT ADOPT ANY OF THE CONNECTIONS-BASED PROPOSALS IN THE *SECOND FNPRM*. THE CONNECTIONS-BASED PROPOSALS WOULD BE COMPLICATED TO IMPLEMENT, BURDENSOME TO CARRIERS AND CUSTOMERS, INEQUITABLE TO RESIDENTIAL AND OTHER LOW-USE CUSTOMERS, AND ILLEGAL

A. Connections-based Methodology with Mandatory Minimum Obligation

Under this proposal, every telecommunications carrier that provides interstate telecommunications services would be subject to a mandatory minimum annual contribution, except to the extent that the provider's contribution is *de minimis*. Under one variation, the minimum requirement would be based on all interstate telecommunications revenues, not end-user telecommunications revenues. (*Second FNPRM*, para. 78) Alternatively, the minimum contribution would be based on revenue-based tiers, whereby contributors would be assessed at increasing percentages of telecommunications revenues, or increasing flat-fee amounts, tied to their level of interstate telecommunications revenues. (*Second FNRPM*, para. 80) In addition, residential, single-line business, payphone, mobile wireless, and pager connections would be assessed a flat monthly fee (Lifeline connections would be exempt), and a residual amount would be assessed on multi-line business connections. Providers initially would be assessed \$1.00 per month for each residential, single line business, payphone, and mobile wireless connection, and \$0.10 and \$0.20 per month, respectively, for each one-way and two-way pager connection. Multi-line business connections would be assessed at varying amounts based on their classification into different tiers of capacity, at levels sufficient to cover residual funding requirements. (*Second FNRPM*, para. 75.)

Connections would be defined as facilities that provide end users with access to an interstate public or private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless, or leased line. (*Second FNPRM*, para. 76) International-only and intrastate-only connections would be exempt, because they do not have an interstate component. With regard to prepaid wireless, a connection would be an activated handset. PBX connections would be assessed based on capacity as with any other multi-line business connection, while Centrex connections would be assessed at one-ninth the rate of a Tier 1 connection. (*Second FNPRM*, para. 76).

This hybrid “modified COSUS” proposal appears to be the worst of both worlds. While it may meet the statutory requirement that all carriers that provide interstate telecommunications services be assessed, this proposal has many complexities related to a revenue-based approach in addition to the deficiencies and inequities of a connection-based approach. California believes that if a contribution mechanism assesses carriers on interstate revenues at all, the entire mechanism should be based on interstate revenues. Use of both kinds of assessments, a connection-based and a revenue-based methodology, in the same mechanism would be unduly burdensome, confusing, and inequitable as discussed below.

The Commission seeks comment on a minimum requirement based on all interstate telecommunications revenues, not just end-user telecommunications revenues. Therefore, wholesale carriers would be required to contribute directly to universal service. (*Second FNRPM*, para. 78) California believes that universal service assessments should be based only on end-user revenues. As the Commission has recognized, a minimum contribution requirement based on all interstate revenues may lead to "double-counting" of revenues. Resellers would likely be charged a universal service pass-through by the underlying facilities-based carriers, and would then pass that increased cost to customers. Resellers would pay a direct universal service assessment as well. Consequently, resellers would likely be required to sell services at a higher price than their facilities-based competitors, whose prices would incorporate only one assessment.

According to the Commission's proposal, providers of connections could offset their connection-based assessments against their minimum contribution based on interstate revenues. (*Second FNPRM*, para. 78) California disagrees strongly with this offset provision. This proposal discriminates against carriers that do not offer both interstate service and network connections, i.e., a purely long distance carrier or a purely local exchange carrier. It favors carriers that can provide both interstate service and network connections, and it favors customers who buy services from these carriers. In addition to being anti-competitive, this proposal would harm rural customers, since many rural telephone companies do not offer long distance service. Their customers would be assessed more for having different carriers provide their local service and long distance service.

The Commission seeks comment on an alternative form of minimum contribution obligation on the basis of revenue-based tiers, whereby contributors would be assessed at increasing percentages of telecommunications revenues, or increasing flat-fee amounts, tied to their level of interstate telecommunications revenues. The Commission seeks comment on whether such a tiered structure may create incentives to mischaracterize revenues in order to be assessed at a lower tier, and if so, how such incentives may be minimized. (*Second FNPRM*, para. 80) If interstate revenues are to be assessed, California does not understand why interstate revenues would be assessed at increasing percentages on the basis of incrementally increasing revenues. This is not how it is done in the current revenue-based mechanism adopted in the *Interim Order*. If a revenue-based methodology is used, a flat percentage is more equitable than a tiered approach. Moreover, a tiered approach for revenues would create administrative problems and arbitrage opportunities, similar to a tiered approach for capacity.

As stated in previous comments, the connection-based portion of this proposal is inequitable, in violation of section 254(d). To be equitable, each carrier's contributions to the federal universal service fund should reasonably reflect its amount of interstate telecommunications activities. Because a significant (though unspecified) portion of the universal service funds would be obtained through the connection-based assessment, interexchange carriers would not contribute their proportionate amount. Since interexchange carriers benefit from the largest amount of end-user interstate revenues, they should bear a proportionate share of the contribution obligation.

The proposal to assess $1 per month per connection would shift more than an equitable share of contributions to no-use, low-use, and low-income (other than Lifeline) customers, in violation of the Act and the Commission's own requirements. Section 202(a) of the Act prohibits carriers from making or giving "any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."[7]

The Commission has required that contributors neither discriminate nor shift more than an equitable share of their contributions to any customer or group of customers.[8] By levying the same assessment on "high-volume," "low-volume," and "no-use" customers, this regressive approach would shift the financial burden to no-use, low-use, and low-income households,[9] discriminating against these

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[7] 47 USC section 202(a).

[8] *Universal Service Order*, 12 FCC Rcd at 9199, para. 829.

[9] As the Commission has recognized, residential customers who have no interstate long-distance usage currently pay interstate universal service assessments between about $0.42 and $0.59 per month, due to the universal service surcharge on their subscriber line charge. In addition, according to a June 17, 2002 ex parte filing by the Institute for Public Representation, a $1 charge would increase the assessment on low-use customers in all but two of the eighteen calling plans studied. COSUS data submitted in initial comments recognized that, with a $1 charge, 62% of all

customers. Such customers typically receive the least benefit from the ability to make interstate calls or to be called by other customers and may be the least able to pay. By assessing a disproportionate amount on individuals who may be least able to pay, the proposal would violate the Commission's commitment to ensure the affordability and availability of telecommunication services for all.

This proposal would also violate section 152(b) of the Act. While a connection-based proposal is not directly tied to intrastate revenues, it is based indirectly on intrastate usage. The connection-based portion of the proposal would assess all "connections," including those that have no interstate usage. This would improperly lead to revenues from intrastate services being used to fund federal universal service.

While the Commission modified the COSUS proposal by adding a mandatory minimum contribution based on interstate revenues, it would maintain the $1 per month assessment on residential and other single-line connections. Thus, any revenues collected from the mandatory minimum contribution would directly reduce the residual contribution to be assessed on multi-line business connections. California recommends that, if a modified COSUS approach is adopted, the revenues collected based on interstate revenues be used to reduce the $1 single-line assessment more in line with the current assessment on no-use or low-use customers.

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households with incomes below $15,000 a year would pay more and 58% of households making between $15,000 and $30,000 would pay more.

The Commission seeks comment on the appropriate assessment levels for multi-line business connections based on capacity, in particular the four-tier structure contained in the *Second FNPRM*, para. 81. Such a tiered structure raises serious equity and efficiency concerns, as the Commission has recognized in the *Second FNPRM*, paras. 82 and 83. As California has stated previously, the tiered approach for multi-line business customers creates administrative problems and arbitrage opportunities, and likely would skew purchase decisions. For example, connections may be configured just below any tier cut-off that the Commission chooses, such as below the 45 Mbps. A capacity-based assessment also could suppress the usage of capacity-on-demand alternatives. The large capacity of fiber installations may be underutilized because customers may not want to pay the universal service assessments for capacity that is not used often. Alternatively, some customers may purchase a single high-capacity connection if that would minimize their universal service assessments, even though multiple smaller capacity connections may otherwise suit their needs better. Additionally, it is unclear how a carrier would determine the number of connections to assess PBX customers based on "trunk side" information.

If the Commission adopts capacity-based universal service assessments, California recommends that assessments for multi-line business connections be restructured to avoid the large jumps in assessments between tiers indicated in the *Second FNPRM*, para. 81. The large jumps between levels could be avoided if assessments are based directly on the size of the customer's connection rather than being a flat rate for all connections within a specified tier. In a simple non-tiered structure, an assessment rate could be, for example, $5 per Mbps of capacity, or whatever assessment rate would yield the desired revenues. Or a more complicated assessment rate structure could be used, akin to the declining block or increasing block rate designs that have been used for energy charges.

California is not prepared to take a position on the proper capacity-based assessment levels for multi-line business connections if such an approach is adopted. However, California notes that the following example would yield approximately the same total revenues as the four-tier structure proposed by the Commission, assuming a $1 Tier 1 rate in the Commission's chart:

	Capacity (C) (Mbps)	Assessment Rate W/I Tier ($/Mbps)	Total Assessment ($)
Tier 1	up to .725 Mbps	2.750	2.750 * C
Tier 2	.726 – 5 Mbps	6.550	2 + (6.550 * (C-.725))
Tier 3	5.01 – 90 Mbps	4.565	30 + (4.565 * (C – 5))
Tier 4	Greater than 90	4.565	418 + (4.565 * (C-90))

For connections with capacities at the mid-points of Tiers 1, 2, and 3, this structure would yield the same universal service assessments indicated in *Second FNPRM*, para. 81. As this chart shows, the effective assessment rate in the Commission's proposal would increase in Tier 2 and then decline in Tier 3. California does not take a position on the desirability of these assessment rates. Additionally, while the above example uses the Tier 3 assessment rate for Tier 4, the Commission would need to determine whether the assessment for a Tier 4 connection should be capped or whether the assessment should continue to increase for larger capacities as indicated in the above chart.

California notes that both the modified COSUS and the modified SBC/BellSouth proposals would discount the assessment on Centrex lines and pagers. By discounting Centrex lines and pagers, the Commission appears to recognize that these particular types of connections should have a lower universal service assessment because of their lower levels of use. California agrees that universal service assessments should be based on relative interstate use. While a revenue-based assessment mechanism is preferable, the Commission should also discount other low-usage connections, e.g., residential connections, if a connection-based mechanism is adopted.

B. Modified SBC/Bellsouth Proposal

The Commission seeks comment on the benefits and drawbacks of a system that would split connection-based contribution assessments between switched access and interstate transport providers, would assess access providers for non-switched connections, and would assess interstate telecommunications services not directly tied to connections based on revenues. (*Second FNPRM*, para. 86) Under this proposal, CMRS providers and wireline carriers that provide both local and interexchange services to the end user would be assessed two units per connection (one for access and one for transport), while a LEC that does not provide interexchange service would be assessed one unit, and the interexchange carrier serving the customer would be assessed one unit. (*Second FNPRM*, para. 86) This proposal would split connection-based contribution assessments between access and interstate transport providers, without distinguishing between residential and business "connections." (*Second FNPRM*, para. 87)

This proposal is similar to the SBC/BellSouth proposal, although the Commission does not propose at this time to directly assess information service providers. (*Second FNPRM*, para. 87) Connections would be defined as facilities that provide end users with access to an interstate public or private network, regardless of whether the connection is circuit-switched, packet-switched, wireline or wireless, or leased line. As a result, assessment on a typical residential connection would be higher than under the first connection-based proposal. (*Second FNPRM*, para. 87)

This complex proposal may meet the statutory requirement that all providers of interstate telecommunications services service be assessed. However, it presents nearly the same problems as the other connection-based proposals. It would violate section 254(d) that provides that every telecommunications carrier that provides interstate telecommunications service contribute to the federal universal service fund on an equitable and nondiscriminatory basis. Although this proposal would assess interexchange carriers 50% of the assessment, it is not equitable because it does not reflect accurately the interexchange carriers usage of the interstate network.

In addition, the modified SBC/BellSouth proposal shifts more than an equitable share of the contribution burden to a particular group of customers, specifically, no-use, low-use, and low-income customers, in violation of Section 202(a) of the Act and the Commission's requirements.[10] The modified SBC/BellSouth proposal is unfair and inequitable for customers who make few or no interstate calls. A connection-based fee levies the same assessment on "high-end," "low-volume," and "no-use" customers and therefore, as we have described, shifts the financial burden to no-use, low-use, and low-income households.
The Commission does not explain why it would be equitable to provide relief to relatively low-use Centrex and paging connections but not to low-use residential and wireless customers, as we described in the previous section of these comments.

As another concern, under this proposal, dial-around customers would pay double. For example, if a customer is presubscribed to one long distance carrier and also uses another company for dial-around, the customer would pay universal service assessments for both. Only a portion of dial-around traffic comes from customers who do not have presubscribed carriers.

While this complex proposal assesses long distance carriers based on connections, these carriers do not provide the connections to end users and may have to obtain detailed information from the local telephone companies about the

[10] *Universal Service Order*, 12 FCC Rcd at 9199, para. 829.

number and types of those connections, as well as information as to whether the customer is a Lifeline subscriber. Such an undertaking would be burdensome and costly, and could be avoided by a revenue-based assessment.

C. Telephone Number-Proposal

The Commission seeks comment on the benefits and drawbacks of proposals to assess connections on the basis of telephone numbers. (*Second FNPRM*, para. 96) This proposal would assess providers on the basis of telephone numbers assigned to end users (assigned numbers), while assessing special access and private lines that do not have assigned numbers on the basis of the capacity of those end-user connections. (*Second FNPRM*, para. 96) "Assigned numbers" would be defined as "numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific users or customers for their use. . . ."[11]

Overall, this per-number proposal presents similar problems as found in the other connection-based approaches. The per-number proposal is both illegal and inequitable.[12]

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[11] See 47 C.F.R. section 52.15(f)(l)(iii).

[12] The CPUC is mindful that in filed comments on a fee-for-numbers proposal in CC Docket No. 99-200, California did *not* similarly assert that the proposal under discussion there was illegal or inequitable. California notes that the fee-for-number proposal the Commission offered in CC Docket No. 99-200 was intended primarily as a means of conserving numbers. Consequently, the CPUC's comments focused on how the fee-for-numbers proposal would work, and whether it would be an effective number conservation measure. The CPUC's comments did not focus on the legality or fairness of a fee-for-number mechanism to fund universal service. California's silence was also prompted by the lack of detail on the fee-for-numbers proposal as a universal service methodology.

The per-number proposal violates section 254(d). Section 254(d) provides that every telecommunications carrier that provides interexchange service contribute to the federal universal service fund on an equitable and nondiscriminatory basis. Interexchange carriers generally do not have "assigned" numbers. Consequently, under an "assigned number" contribution methodology most interexchange carriers would not substantially contribute to the federal universal service fund. This proposal clearly does not meet the requirement that all carriers that provide interexchange service contribute on an equitable basis to the federal universal service fund. The per-number proposal would exclude entirely or reduce significantly the contribution of carriers that provide the majority of interstate service.

As with the other connection-based proposals, there is also an equity issue for residential customers. A number-based fee levies the same assessment on "high-end," "low-volume," and "no-use" of interstate service customers.
The same arguments apply as stated above with the other connection-based proposals. The per-number based proposal shifts more than an equitable share of the contribution burden to a particular group of customers, no-use, low-use, and low-income customers, in violation of Section 202(a) of the Act and the Commission's requirements.[13]

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[13] *Universal Service Order*, 12 FCC Rcd at 9199, para. 829.

Moreover, the number-based proposal has numerous complications of its own, some of which are discussed below.

The Commission seeks comment on whether the plan might encourage public policy goals such as the conservation and optimization of existing telephone number resources. (*Second FNPRM*, para. 96) First of all, California believes the Commission should not view number conservation as a primary factor in choosing a universal service contribution methodology. Federal universal service contribution and numbering conservation methodologies are very different mechanisms serving very different goals. Number conservation may be incidental to a universal service contribution methodology, but it should not be the reason a certain universal service contribution method is used.

Regardless, assessing providers on the basis of "assigned" numbers only would generally not conserve numbers because it will not discourage carriers from holding large quantities of available numbers, such as administrative, aging, and intermediate numbers. We note that if carriers were assessed on all numbers held, then perhaps this proposal would help conserve numbers by encouraging carriers both to not overbuild their inventory, and to practice more efficient number assignment practices. At the same time, California is concerned that large multi-line customers could avoid such assessments by installing on-site telecommunications facilities that would minimize the need for telephone numbers, e.g., by routing incoming calls on another basis. If this were to occur, it could lead to a shrinking assessment base, which in turn would require that the per-number assessment rate be increased in order to maintain adequate interstate universal service funding. While number conservation is a worthwhile goal, it should not be pursued in a manner that would tend to shift universal service funding obligations to small users.

The Commission seeks comment on whether a telephone number-based methodology would address some of the concerns expressed by commenters regarding a connection-based approach. For instance, some commenters argue that a flat-fee connection-based approach would be an illegal assessment on intrastate revenues under section 2(b), because connections provide, in part, intrastate access. (*Second FNPRM*, para. 96) The Commission asks whether the Commission's exclusive jurisdiction over numbering resources addresses section 152(b) concerns raised by some commenters. (*Second FNPRM*, para. 96)

As with the other connection-based proposals, California believes a number-based methodology would violate section 152(b). While a number-based proposal is not directly tied to intrastate revenues, it is based indirectly on intrastate usage. The number-based proposal would assess all "assigned numbers," including those that have no interstate usage. A substantial percentage of all telecommunications revenues are intrastate. The Court of Appeals for the Fifth Circuit found that the Commission had exceeded its jurisdiction by assessing contributions for universal service support mechanisms for schools and libraries and rural health care providers based, in part, on the intrastate revenues of universal service contributors.[14] Similarly, a number-based approach would indirectly and improperly lead to revenues from intrastate services being used to fund federal universal service.

Moreover, while Section 251(e)(1) of the Act gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States, nothing in section 251(e)(1) allows the Commission to override the jurisdictional bar of Section 152(b).[15] In addition, nothing in section 152(b) provides an exception for section 251(e) from 152(b)'s jurisdictional bar.[16]

The Commission seeks comment on whether a minimum contribution obligation on all providers should be imposed. (*Second FNRPM*, para. 96) If the Commission is referring to a minimum contribution based on interstate telecommunications revenues, as in the modified COSUS proposal, California would oppose such a minimum contribution, for the reasons stated in our discussion of that proposal in Section IV.A. of these comments. In general,

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14 *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 at 448 (Fifth Cir. 1999).

15 Section 251(e) provides "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States . . . (2) Costs. The cost of establishing telecommunications numbering administration arrangements and number port-ability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. section 251(e).

16 Section 152(b) provides that "[e]xcept as provided in sections 223 through 227, inclusive, and section 332, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges,

California believes that if a contribution mechanism assesses carriers on interstate revenues at all, the entire mechanism should be based on interstate revenues as it is currently. As stated above, a connection-based mechanism is complex and inequitable. Adding an interstate revenue component just adds more complexity to the mechanism.

The Commission invites commenters to estimate assessment rates under the telephone-number-based proposal. (*Second FNRPM*, para. 97) The CPUC is not in a position to propose an assessment rate, but we want to inform the Commission of the quantity of assigned numbers and of total numbers held in California. As of June 30, 2002, carriers in California hold approximately 57,843,000 assigned numbers. The CPUC will be receiving an update to this figure as of December 31, 2002 in about mid-March 2003. As of January 31, 2003, the total quantity of numbers held by carriers in California is approximately 144,530,000.

The Commission asks for comment on whether to assess telephone numbers associated with pagers at a lower level. (*Second FNPRM*, para. 97) If pagers are to be treated favorably, perhaps because they generate less usage on the PSTN, then residential customers and wireless customers who generate less interstate usage should be charged less as well. We reiterate that a revenue-based methodology is a more straightforward and equitable way to address such equity

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classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service . . . " 47 U.S.C. section 152(b).

issues, rather than attempting to carve out certain classes of low-usage customers for reduced connection-based assessments.

The Commission seeks comment on how a telephone number-based methodology would assess ported telephone numbers. (*Second FNRPM*, para. 97) This is another obstacle to a successful number-based methodology. When a telephone number is ported, it is assigned to both carriers. For instance, if carrier A ports a number to carrier B, both carriers show that number as "assigned" in their respective inventories. However, only carrier B is deriving revenue from the "assigned" number. If Carrier A must contribute to the federal universal service fund for a number it ported out to Carrier B, the Commission would need to identify a mechanism to ensure that Carrier A is reimbursed.

The Commission seeks comment on whether it would be appropriate to assign lower telephone number-based assessment rates to local exchange carriers that do not participate in 1,000 block number pooling. (*Second FNPRM*, para. 97) A carrier that does not pool numbers generally uses numbers less efficiently. California does not believe that lower telephone number-based assessment rates should be given to local exchange carriers that do not participate in number pooling. This would, in effect, reward the inefficient use of numbers.

The Commission seeks comment on the relative impact of a telephone number-based methodology on carriers that provide connections with smaller amounts of capacity, such as those provided to residential and single-line business users, compared to providers of higher-capacity connections to large multi-line businesses or providers of smaller-capacity connections to large businesses with heavily used toll-free numbers (e.g., a national retail catalog company). (*Second FNPRM*, para. 98) When an 800 number is used it appears there would be two assessments. One assessment would be for the 800 number. The second assessment would occur at the point when the 800 number translates to 10-digit dialable telephone numbers at the local central office. For instance, 100 lines, each with an assigned telephone number, might be used to handle incoming calls to the 800 number. Under the "assigned" number proposal, all of these numbers would count as "assigned" numbers.

The Commission seeks comment on whether there are any numbers associated with special access and private lines that could be assessed. (*Second FNPRM*, para. 98) If not, the Commission asks commenters to discuss whether special access and private lines should be assessed based on the capacity of the connection, and whether doing so would sufficiently offset possible inequities related to differences of capacity. Most dedicated lines do not have numbers associated with them. A capacity-based assessment structure could be developed, although California opposes such an approach, as discussed above.

The Commission also seeks comment on that aspect of the Ad Hoc and AT&T proposal that would assess non-switched multi-line business connections based on three tiers of capacity with the same multipliers proposed by CoSUS.[17]

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[17] *See Ad Hoc Oct. 3 Ex Parte* at 3 n.7.

(*Second FNRPM*, para. 98) The Commission seeks comment on whether these multipliers would unfairly advantage contributors that provide high-capacity connections, and whether an increased number of tiers or different tier levels may reduce such an advantage. Alternatively, the Commission seeks comment on whether to categorize connections into the same four tiers described above, based on capacity. (*Second FNRPM*, para. 98)

As stated above, such a tier structure raises serious equity and efficiency concerns. If a capacity-based structure is used, California would recommend the structure similar to the one we proposed above in discussing the modified COSUS four tier proposal. As we stated previously, the large jumps between levels could be avoided if assessments are based directly on the size of the customer's connection rather than being a flat rate for all connections within a specified tier.

The Commission seeks comment on whether the forecast and utilization reports, required by section 52.15(f)(6) of the Commission's rules,[18] adequately identify a telecommunications carrier that receives a telephone number from a non-carrier. California cannot conceive of when this scenario would occur. To California's knowledge, only carriers can get telephone numbers, and carriers in turn can assign numbers to non-carriers, but not vice versa.

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[18] See 47 C.F.R. section 52.15(f)(6).

The Commission seeks comment on other mechanisms that could be used to identify the number of telephone numbers that have been assigned to particular carriers. California believes that another mechanism is not needed.

The Numbering Resource Utilization and Forecast Report (NRUF) should be sufficient.

The Commission asks commenters to quantify the costs of changes to any carrier billing systems and other costs associated with implementing this proposal. With regard to billing, California believes that it would be very expensive to change the billing system for the carriers to a per-number assessment.

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V. CONCLUSION

For the reasons stated above, California recommends that the Commission continue the revenue-based contribution methodology adopted in the *Interim Order* for the long-term, modifying the mechanism as necessary. In addition, as discussed above, the Commission should not adopt any of the connection-based proposals in the *Second FNRPM*. In general, they would be complicated to implement, burdensome to carriers and customers, inequitable to residential and other low-use customers, and illegal.

Respectfully submitted,

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